U.S. Department of Justice

United States Attorney
Southern District of New York

The Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278

April 16, 2024

VIA ECF
The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Street
New York, New York 10007

Re: *United States v. Larmore*, 24 Cr. 140 (PAE)

Dear Judge Engelmayer:

The Government writes, pursuant to the Court's order at the March 19, 2024 initial pretrial conference, to provide an update on the status of discovery in this matter, and the proceedings in *Securities and Exchange Commission v. Larmore et al.*, 23 Civ. 2470 (DLR) (D. Ariz.) (the "SEC Action").

I. Discovery

A. The Government's Production of Discovery

To date, the Government has produced to the defense approximately 25,000 documents or other files, in addition to a digital forensic copy of the defendant's cellphone. More specifically, on March 19, 2024, a few hours after the Court signed and entered the protective order in this case, the Government made its initial Rule 16(a) production. That production included documents, emails, recorded phone calls, and other records produced by banks, brokerages, internet service providers, phone service providers, credit reporting agencies, a press release distribution service, and the SEC, as well as criminal history records and search warrants and supporting affidavits for the defendant's cellphone and for prospective and historical cellphone location information.

On March 25, 2024, the Government made a second Rule 16(a) production, which included documents, emails, and other records produced by the court-appointed receiver in the SEC Action, the returns from the prospective and historical cellphone location information search warrant, and search warrants and supporting affidavits for Google, Microsoft, and Apple accounts used by the defendant. On March 26, 2024, the Government produced a digital forensic copy of the defendant's cellphone.

Finally, on April 9, 2024, the Government made another production which included documents, emails, and other records from a bank, an accountant who previously worked with the defendant, and a domain registrar and web hosting company.

Three search warrants have been executed in this case. First, on March 7, 2024, the Government obtained a warrant for prospective and historical cellphone location information for the defendant's cellphone. As noted above, the papers for that warrant were produced on March 19, 2024 and the returns obtained pursuant to that warrant were produced on March 25, 2024. Second, on March 14, 2024 (the day of the defendant's arrest), a search warrant for the defendant's cellphone was executed. As noted above, the papers for that warrant were produced on March 19, 2024 and a digital forensic copy of the defendant's cellphone was produced on March 26, 2024. Third, on March 22, 2024, the Government obtained a search warrant for Google, Microsoft, and Apple accounts used by the defendant. Google has indicated that it does not have records responsive to the warrant, which is inconsistent with the Government's understanding of the usage of relevant accounts. Accordingly, the Government is engaging with Google about its response to the warrant. Microsoft and Apple have not yet provided returns in response to the warrant. Once returns are produced by these providers, the Government will promptly conduct privilege screens and responsiveness reviews and provide identified materials to the defendant.

With respect to the privilege screens, on the day of the defendant's arrest, the Government requested from defense counsel a list of the names, phone numbers, and emails of the defendant's attorneys so that the Government could undertake a privilege screen on the defendant's cellphone. Defense counsel provided such information on March 15, March 20, and April 4, 2024. A privilege screen of the defendant's cellphone is ongoing and is expected to be completed (absent unforeseen obstacles) by the end of the week. After that privilege screen is completed, a responsiveness review will be promptly conducted and a set of identified materials will be produced to the defense. The Government will also conduct additional privilege screens on materials it obtains as necessary and appropriate.

The Government's investigation remains ongoing, and it is likely that the Government will obtain additional Rule 16(a) material in the future, which it will promptly produce to the defendant.

B. The Defendant's Production of Discovery

On March 19, 2024, the Government issued a written demand to defense counsel for reciprocal discovery under Rule 16(b). To date, the defense has not produced any Rule 16(b) material.

II. The SEC Action

On November 28, 2023, the SEC filed a complaint in the District of Arizona, in case number 23 Civ. 02471 (DLR), charging the defendant with orchestrating two alleged schemes: (1) the fraudulent tender offer scheme to manipulate the stock price of WeWork that underlies the charges in the Indictment in this case, and (2) an investment fraud scheme involving ArciTerra, a real estate and management company the defendant first founded in 2005 and that the defendant controlled until last year.

According to the SEC's complaint, two of the hundreds of entities that ArciTerra manages are private real estate investment funds called ArciTerra Note Fund II, LLC and ArciTerra Note Fund III, LLC (the "Funds"). From 2006 to 2009, the defendant and ArciTerra raised approximately $45 million from approximately 1,045 investors for the Funds, to which the defendant owed fiduciary duties as an investment adviser. SEC Complaint ¶ 2. As alleged, from at least 2017 through 2023, the defendant was engaged in a scheme by which he misappropriated at least $17 million from the Funds' holdings to pay for other cash needs of his businesses, and to fund a lavish lifestyle of private jets, yachts, and expensive residences. SEC Complaint ¶¶ 3, 37, 40, 44. The defendant allegedly siphoned money from the Funds by transferring the money in those Funds to accounts of various ArciTerra entities, then commingling the money with proceeds from other businesses, and finally funneling the money to his own accounts or using it for his own personal expenses.

On December 21, 2023, with the consent of the parties in the SEC Action, the Honorable Douglas L. Rayes, United States District Judge for the District of Arizona, entered an order temporarily freezing the defendant's assets and appointing a temporary receiver (Allen Applbaum) for various ArciTerra-related entities as well as Cole Capital Funds, LLC (the company the defendant is alleged to have used for his WeWork fraudulent tender offer scheme). SEC Action, Doc. No. 77. A preliminary injunction hearing to determine, among other things, whether to continue the asset freeze and receivership is scheduled for May 8, 2024.

On March 31, 2024, the Government moved to intervene in and stay discovery in the SEC Action. SEC Action, Doc. No. 124. Defense counsel indicated to Judge Rayes during an April 12, 2024 telephonic conference that there is "likely to be agreement" on the Government's stay motion, but, to date, neither the SEC nor the defendant have committed to a final position. Responses to the Government's motion in the SEC Action are due on April 19, 2024, with replies due on April 24, 2024.

Respectfully submitted,

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Cc: Defense Counsel (via ECF)